IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

JULIE CHRISTOFFERSON TITCHBOURNE,)
)
Plaintiff,)
)
vs.) No. A7704-05184
)
CHURCH OF SCIENTOLOGY, MISSION)
OF DAVIS, a non-profit California)
corporation, doing business in)
Oregon; CHURCH OF SCIENTOLOGY)
OF CALIFORNIA, a California)
corporation, doing business in)
Oregon; and L. RON HUBBARD,)
)
Defendants.)

EXCERPT OF PROCEEDINGS

Volume XII
Pages 8284 to 8369
Testimony of Gerald D. Armstrong

May 8, 1985

BILL ELLIS & ASSOCIATES
Court Reporters
1001 S.W. Fifth Ave.
Portland, Oregon

(Afternoon session on May 8,
reconvened at 2:05 p.m.
Following proceedings held in the
presence of the jury.)

THE COURT: Mr. McMurry, rebuttal.

MR. McMURRY: Thank you, Your Honor. Plaintiff will recall Gerald Armstrong.

THE COURT: Mr. Armstrong, will you please take the stand. You have already been sworn and you are still under oath.

GERALD D. ARMSTRONG,

called as a rebuttal witness by the plaintiff, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McMURRY:

Q. Mr. Armstrong, have you and I reviewed certain Naval and Veterans' Affairs documents that have now been made available to us?

A. Yes.

Q. I'll hand you what has been marked as Plaintiff's Exhibit 331 and ask you if you can identify that document.

MR. COOLEY: Can I have a copy, please.

MR. McMURRY: Okay.

BY MR. McMURRY: (Continuing)

Q. Can you identify that document, Mr. Armstrong?

A. Yes, I can.

Q. What is it, please?

A. This was a report of a physical examination that was done on Mr. Hubbard upon his application for a commission into the Naval Reserve prior to World War II.

Q. Can you determine the approximate date of that document?

A. I believe it is April 1941.

MR. COOLEY: Where does that date appear?

THE WITNESS: I don't see it on this one because there is a little sign on the corner, but I know that the application was at that time. And a medical examination was done at that time. This is that medical examination, and in any case, it certainly is in early 1941.

MR. COOLEY: I object to those conclusions; move that they be stricken. There is no basis for them whatsoever and there is no date on this document. And furthermore, this document is totally hearsay on the medical matters that it purports to represent.

MR. McMURRY: Your Honor, I might be able to help the Court. The reason that --

MR. COOLEY: I object to any reasons stated by Mr. McMurry as to those documents, unless they are stated outside the hearing of the jury.

THE COURT: All right. Mr. Cooley, just calm down. Let's see what you have to say. It will be outside the presence of the jury.

(Following proceedings held in chambers.)

MR. McMURRY: Exhibit 331, Your Honor, the reason that the date is unapparent on the face of it, it's a copy produced by the defendants. There's a sticker that appears to have been affixed to the document, with a notation, RTP. From prior experience, we know that that means request to produce 1C. And so the sticker obliterates the date. Mr. Armstrong has testified of his own knowledge the application occurred in early 1941. He believes it's April. Now, if we had the original or a copy that didn't have the sticker on it, then we would be able to give the exact date.

THE COURT: Okay.

MR. McMURRY: But the problem is, it's not ours, that the date is obliterated. That occurred in the copying process by defendants.

MR. COOLEY: If Armstrong is able to state the date, then that problem gets eliminated. But the problem of hearsay is not. Medical opinion which is not subject to cross-examination, medical opinion which is going into this record, ought not to go in without an opportunity to have the physician here to examine him. If this were a tort case for personal injuries, that principle would clearly apply. I see no reason why it should be deviated from here.

MR. McMURRY: Well, too, Your Honor, it's an admission against interest in the first place. It goes to the representations solely of crippled and blind and self-cured. Number two, it is not offered for the truth of the medical opinion, it is offered to prove --

THE COURT: I'm not so sure it's an opinion.

MR. McMURRY: It's offered to prove just simply the status of his health through each of the periods of time in question.

MR. COOLEY: I don't know by what alchemy a statement of the state of his health ceases to be a medical opinion. This is a physician's certificate, it is not the -- it's not an admission by L. Ron Hubbard or any party to this case. It's a statement by a Naval physician, and that naval physician is not here to be cross-examined and this document is nothing more than just pure hearsay.

THE COURT: I can think of a couple of reasons it's an exception to the hearsay rule. A couple. It is a medical record. It is a Naval record. I assume that they do physical -- well, I know they do physical examinations upon application in the service.

MR. COOLEY: Surely they do. But that doesn't make this admissible, Your Honor.

MR. McMURRY: It's a document of which a Court or a jury kept in the ordinary course of military and Veterans affairs; number one. Number two, it is -- it speaks as an admission. Whether it comes from the word of the declarant or not, it certainly is a record of his physical condition. Hearsay does not have to be from the declarant, it can be the res gestae of the fact.

MR. COOLEY: This document is offered to show that L. Ron Hubbard was not blinded and crippled. That's the only reason it was offered.

Mr. McMurry says it is offered as an admission. He knows it can't come in as an admission of L. Ron Hubbard; it's a statement of another person. That's a statement of a physician. There is no showing that this is an official document. There is no foundation laid for that whatsoever. I don't see any certification on this document from Washington or anywhere else.

THE COURT: "we certify that" --

MR. COOLEY: This a document that is being offered here. Whatever certification you have there does not certify this document. That's a different certification.

THE COURT: It certifies a medical report was done.

MR. COOLEY: I understand, but that is not an appropriate certification form to get this documented admissible. It's not attested. There are procedures for establishing attested copies and certified copies. And I assume there are procedures whereby medical records in this state get admitted.

THE COURT: Medical records come in a lot of different ways in this state. And the doctor isn't always here when they come in.

MR. COOLEY: But there are procedures by which one establishes the medical records. And I assume that licensed hospitals in the state of Oregon the records come in -- licensed hospitals, as they do in other states. This is not coming in under any Oregon statute or any Oregon rule of evidence. This is coming in without proof of its authenticity, without a certification and without the physician here to be examined. I submit there is no --

THE COURT: You are not going to get a on medical record -- Now, let's be sensible. You are not ever going to get in any government record -- the doctor here that did a physical examination in 1941 to be here.

MR. COOLEY: I'm not saying that you are, Your Honor. But I'm saying there are procedures by which federal documents get certified or authenticated. That is --

THE COURT: That's true.

MR. McMURRY: I will lay a foundation as to how the document came into his possession.

THE COURT: That's a different situation.

MR. COOLEY: Let's deal with it so we won't have to come in here again. I assume he is going to say it came in his possession, that he obtained it somehow, either in the files of L. Ron Hubbard or from the federal government. That is not going to obviate the necessity of properly authenticating it. I believe that Mr. McMurry ought to make an offer of proof on it now so we know what we are dealing with.

MR. McMURRY: All right. We have exhibits that will show that the GO's office obtained all the medical reports and Veterans' records under a Freedom of Information request in 1976. We have compliance reports and the transmission of all Naval records and vet records from the GO's office in Washington, D.C. to GO Flag with all copies being distributed.

THE COURT: I saw that letter somewhere.

MR. COOLEY: That will still doesn't do it, Your Honor.

MR. McMURRY: Sure it does.

MR. COOLEY: It does not establish that these are certified documents. The mere fact the GO did it does not mean this was one of the documents they got.

MR. McMURRY: We can also establish by this Court that the documents that we have used were documents produced from the archive documents and the Armstrong documents and which we received last Friday from defendants.

MR. COOLEY: That's no secret. That doesn't make it admissible. There are procedures for getting in medical records. He has not followed them.

MR. McMURRY: Under 911 they are clearly admissible as being authenticated. We asked for those records and we finally received them and we received them from the defendant.

MR. COOLEY: These are claimed to come in because they are official federal records and the procedure for authenticating and certifying those documents is a very clear procedure that has not been followed. There is no seal of the government on them. There is no attestation from the custodian of the records that they are genuine. There is nothing. And they are therefore not admissible under any circumstances.

THE COURT: What else?

MR. McMURRY: That's it, Your Honor. It came from the files of the defendant Church of Scientology of California.

THE COURT: Okay. Anything else you want to make in the record?

MR. COOLEY: The fact they came from the files of the Church of Scientology of California does not make them genuine or admissible. I assume that these are being offered to prove that a physical examination took place by an official, a federal doctor, that the method of authenticating that record is clear and the method by which it can be done and should be done, proof of a public document or official document has not been followed. There could be all manner of records in a file and that doesn't mean that they are authentic, they are genuine or they are the only records on that subject matter.

THE COURT: Well, let me find the rule. We have to take a look at 100.3, 100.4 and those sections.

MR. McMURRY: And self-authentication?

THE COURT: They are not self-authentication, necessarily; when the originals or when the authentication is not obtainable.

MR. COOLEY: It is obtainable, Your Honor. All one has to do is get ahold of the federal custodian of the documents and have them certified and authenticated.

THE COURT: These are 1941 documents.

MR. COOLEY: That doesn't matter. They are in federal archives if they are official documents. And they can be certified and authenticated as official documents.

THE COURT: And there is also a rule if they are obtained from the party opponent in here. As far as the hearsay portion, the hearsay problem doesn't concern me.

MR. COOLEY: So long as they come within exception of the hearsay rule. I don't believe a foundation has been properly laid to bring them in with any exception to the hearsay rule and they have not been properly certified and authenticated.

I am sure Your Honor has seen many times federal custodians certify that this an official document and the federal seal is on the document.

THE COURT: Sure. I doubt whether that's going to be necessary. But let me find the rule.

Once you get past authentication, it's I think 100.3 and 100.4 are the code numbers you to look at on that. Then they say the exception to the hearsay rule is statements in ancient documents: "A statement in a document existing twenty years or more". It's an exception to the hearsay rule. That's certainly more than twenty years.

MR. COOLEY: Assuming it's an official document.

THE COURT: Yes.

MR. COOLEY: How do you authenticate if it's genuine? That's my point. This witness cannot authenticate that as a genuine federal document.

MR. McMURRY: The authentication aspect of this document would be taken care of by the production of the document in accordance with the Court's rule. They were obtained from the defendants, themselves.

MR. COOLEY: That doesn't make them genuine, because the defendant, in turn, obtained them from some other source.

MR. McMURRY: From the government.

MR. COOLEY: If they come from the government, the government has to certify they are government documents. You have to certify they are if you are going to put them in evidence. That's as clear as it can be.

THE COURT: Did you see the documents?

MR. COOLEY: I'm only dealing with this one document, Your Honor. I haven't been given any of those others.

MR. McMURRY: The most recent document that we have in the material we will be dealing with are 1973, which is a letter Mr. Armstrong can personally identify as having been written, signed by L. Ron Hubbard.

THE COURT: That's his statement.

MR. McMURRY: That's right.

THE COURT: You may have the cart before the horse, since you say you have got those other letters requesting the information.

MR. McMURRY: Fine. I'll go to those exhibits first, then.

THE COURT: To that extent, you may have the cart before the horse. And meanwhile, give me a chance to look at my evidence code and give you the answer to what I think you are looking for. Okay?

MR. McMURRY: Very good, Your Honor. I'll go to --

THE COURT: Authentication in Oregon it says -- they give all sorts of ways of doing it and they say they are illustrative only and even what they say is not the only way.

MR. McMURRY: I think it's subsection six or E, I can't remember, when documents appear from their own form and type to be self-authenticating, and lord knows, these certainly have that self-authenticating --

MR. COOLEY: There is nothing about these documents that is self authenticating at all.

MR. McMURRY: They are US Naval documents and they relate to L. Ron Hubbard.

THE COURT: Once again, they refer to one that's been -- part of this self-authentication business, I will hve to read it. There is a document that is in existence over twenty years.

MR. McMURRY: These all have.

MR. COOLEY: Mr. McMurry begs the question when he says they are official US Naval documents. That's the very point he has to prove. There is a very simple way to prove it.

THE COURT: It doesn't say that in the codes. It says appears to be what it purports to be.

MR. COOLEY: I can make anything appear to be what it purports to be, Your Honor.

THE COURT: That's a question I will have to determine when it appears to be what it purports to be.

I would still go ahead and lay your foundation.

MR. McMURRY: Yes, I will, Your Honor. I will give the Court this pack.

MR. COOLEY: If the Court is going to have that pack, I would like to have the pack as well, so I can be reviewing it so I won't be caught flatfooted when the these documents are offered.

THE COURT: Do you have an extra pack?

MR. McMURRY: Yes. I'll be happy to give him a pack.

(Following proceedings held in the presence of the jury.)

(Following proceedings held in the presence of the jury.)

BY MR. McMURRY: (Continuing)

Q. Before turning your attention to Exhibit 331, please tell us how you became aware of Exhibit 331. Where did you first see it?

A. Well, there are two sets of documents, and this one here came from what were called the FOI Document, Freedom of Information Act, or at least what were given to me by the Guardian's Office or given to Omar Garrison by the Guardian's Office as what they obtained of Mr. Hubbard's records under the Freedom of Information Act. There was another complete set -- or lacked some of the medical documents, but it was a very extensive set, and that was what Mr. Hubbard retained in his own archives.

And I had the first set throughout 1980 and '81, and the latter part of the 1981 I got the FOI, Freedom of Information, Act documents, and this is included in that latter set.

Q. I'm going to hand you Exhibit 349 and ask you if you can identify that document and where you first saw it.

A. Yes, I can identify it, and it formed part of the same set of materials which were given to the archives, the Hubbard Archives, from the Guardian's Office.

The Intelligence Bureau at that time was holding the various naval or Veterans Administration documents of Mr. Hubbard's, obtained under the Freedom of Information Act.

Q. What is the date of that Exhibit 349?

A. 19 -- March 1976.

Q. All right. Who is it from?

A. This is from the Assistant Guardian for Info in Washington, D.C., AG Info D.C. Info is the Intelligence Bureau.

Q. Who is it addressed to?

A. It is addressed to CSG Assistant Info. That's Commodore Staff Guardian, which was Mary Sue Hubbard. And her Assistant for Intelligence was Jimmy Mulligan, and he's cited in the salutation, "Dear Jimmy." It's signed "Mike," and the AGI in Washington, D.C. at that time was Mike Misner.

Q. I'll hand you now Exhibit 350 and ask if you can identify that document. What is 350?

A. This is another correspondence memo from Mike Misner, AG Info. D.C., to CSG Assistant, Jimmy Mulligan.

Q. And its date?

A. 31 March 1976.

Q. Thank you. And Exhibit 351, please.

A. (Witness gave no response.)

Q. What is it?

A. This is from the AG Info. It's noted as Rick, AG Info D.C., and it's -- I can't say for sure, but there was a

Rick Mockson who was involved at that time and it's likely him. In any case, this formed part of the FOI materials which came from the Intelligence Bureau. This is a memo for all Guardian's Office staff, and it's regarding LRH personal records.

Q. Does it include the naval records?

A. Yes, it does.

Q. And its date, please.

A. It's 19 July 1976.

Q. July 19th of '76?

A. Yes.

Q. Were those in the Archive documents that accompanied the Freedom of Information that you are testifying to?

A. Yes.

MR. McMURRY: We'll offer Plaintiff's Exhibits No. 349, 350, and 351.

MR. COOLEY: I have no objection to those documents.

THE COURT: They will be received.

(Plaintiff's Exhibits No. 349, 350, and 351 admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Now, turning your attention to Exhibit 331, that was in the Freedom of Information Act information that was in the archives?

A. For sure it was there. I can't say for certain if it was in the -- in the other archives, the Hubbard Personal Archives, prior to that or not. But it definitely was in the FOI material.

Q. You received them from whom, again?

A. Well, they were obtained for me, or for Omar Garrison by Vaughn Young, who had been assigned to assist as a Guardian's Office liaison in the biography project, but they came from B1, the Intelligence Bureau, at the US Guardian's Office in L.A.

Q. In further identification of Exhibit 331, you testified that it is a physical examination regarding the appointment of L. Ron Hubbard as an officer of the United State's Navy?

A. Yes.

MR. McMURRY: We will offer Exhibit 331.

MR. COOLEY: I object to it as being not genuine and having no evidence to the contrary.

THE COURT: Objection is overruled. I will cite you to the specific code section of that.

MR. COOLEY: I wish you would, if you would, Your Honor.

THE COURT: At our first recess.

MR. COOLEY: Thank you, sir.

BY MR. McMURRY: (Continuing)

Q. Mr. Armstrong, would you just point out the salient feature of Exhibit 331 relating to the eyesight or health of Mr. Hubbard as of the time this application for commission was made.

A. There's a notation on the first page which gives his vision in the right eye as 17/20, the left eye is 15/20. And on the second page of this document, in the section called "findings and recommendations," it states that "we hereby certify that Mr. Lafayette Ronald Hubbard is not physically qualified for appointment as an officer of the United States Navy Reserve."

And these are also -- the summary of defects is listed just above that, and that is the "vision" which I mentioned earlier, "17/20 and 15/20, both corrected to 20/20."

Q. All right. I'll hand you now --

MR. COOLEY: Again, could we have the date, Your Honor, that Mr. Armstrong places on this document?

THE WITNESS: I believe that the identical document is also in a different form within the bulk of documents which we have, and it's April 1941.

BY MR. McMURRY: (Continuing)

Q. I'd like you next to identify, if you can, Exhibit 332. What is it?

A. This is the findings of a special board of medical examiners, dated June 11, 1941. And the board met to consider the results of the physical examination which had given a finding of disqualification. So they met to discuss or to consider that particular point.

THE COURT: What number are you referring to now?

MR. McMURRY: 332, Your Honor.

THE COURT: Okay.

BY MR. McMURRY: (Continuing)

Q. When did you first see this document and where, Mr. Armstrong?

A. This was also included in what were called the FOI Documents. It would be sometime in the latter part of 1981.

Q. All right. Mr. Armstrong, I notice that the first page of 332 seems to be duplicated by the second page. One page seems to be signed and the other page seems to have the names typed in. In all other particulars are they the same document.

A. Yes.

Q. All right. .

MR. McMURRY: We will offer Exhibit 332.

MR. COOLEY: I object. Lack of foundation. Not authentic.

THE COURT: Overruled.

(Plaintiff's Exhibit No. 332 admitted

into evidence.)

BY MR. McMURRY: (Continuing)

Q. Now, Mr. Armstrong, would you point out, please, the salient portions of Exhibit 332.

A. The -- It's the finding of the -- this board that -- it reads here: "As it is considered that defective vision, right eye 17/20, left 15/20, each corrected to 20/20, is insufficient to disqualify."

So the physical defect which was found on the original examination was overruled, I guess, or -- and it was deemed that he was physically qualified for a commission into the Naval Reserve.

Q. All right. Turn your attention now to Exhibit 333, if you would, please. What is it?

A. That is a report of medical survey from Mr. Hubbard. It's dated 10 September 1945.

Q. When did you first see it?

A. Well, this was definitely included in the FOI Documents in 1981, and I can't say for certain that this was amongst the documents which were in Mr. Hubbard's Archives, although the bulk of them were.

MR. McMURRY: We will offer Exhibit 333.

MR. COOLEY: Same objection.

THE COURT: Same ruling.

(Plaintiff's Exhibit No. 333 admitted

into evidence.)

BY MR. McMURRY: (Continuing)

Q. Please point out to the Court and jury the salient features of Exhibit 333.

A. Okay. It states that -- right at the beginning that "Mr. Hubbard was admitted to the sick list at Naval Affairs staging area for city of Monterrey, California on 10 April 45, with ulcer, duodenum. He was transferred to this hospital on same day" -- and the hospital that's being referred to is U.S. Naval Hospital, Oakland, California.

Throughout this document it talks about the duodenal ulcer, which was apparently a recurring problem of Mr. Hubbard throughout the war and at least is the problem cited on 10 September 1945.

Q. All right. In the last paragraph, can you make out the recommendations of the report of the medical survey team?

A. "In view of the recurrence of a duodenal ulcer and its persistence as demonstrated by x-ray evidence while under treatment, it is the opinion of the board that this officer is not physically fit to perform all the duties of his rank and that he should be ordered to appear before a retiring board. Maximum benefits of hospitalization."

Q. All right. Turn your attention, please, to Exhibit 334. Can you identify that document, please?

A. Yes. This is an appeal by Mr. Hubbard, the claimant, to the Administrator of Verterans' Affairs. And in this he is requesting an upgrade of the disability which he was getting at that time, and this is dated 4 July 1946.

Q. What was the address shown on his application?

A. PO Box 941, Miami Beach, Florida.

Q. Was he in Florida at that time? Do you recall?

A. I believe he was at that time.

Q. All right. Is it signed by Mr. Hubbard?

A. Yes, it is.

Q. When did you first see this document and where?

A. This one here was definitely in Mr. Hubbard's Personal Archives, in addition to the -- it could have been the carbon copy of it, because he retained a carbon. But this appears to be a photocopy of the original which was sent to the Veterans' Affairs. So this came from FOI, but the same document was also in Archives.

Q. All right. Would you please --

MR. McMURRY: We'll offer Exhibit 334.

MR. COOLEY: I have no objection to this one being as signed by L. Ron Hubbard.

THE COURT: 334 is received.

(Plaintiff's Exhibit No. 334 admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Would you please tell the Court and jury what conditions he addresses in this appeal for better benefits.

A. He mentions that he had been awarded ten percent for duodenal ulcers. And then he describes the fact that he cannot perform --

MR. COOLEY: I object to the characterization, and I ask that the entire document be read if any part of it is going to be summarized.

BY MR. McMURRY: (Continuing)

Q. Does he then discuss eyes?

A. Yes, he does.

MR. COOLEY: I object to leading. I ask that the entire document be read, under the rule that we have used, to have it all admitted in the interest of fairness.

THE COURT: It's Rule 106.

MR. COOLEY: Yes, sir. The number escaped me for the moment.

THE COURT: Your request is granted.

MR. COOLEY: Thank you, Your Honor.

BY MR. McMURRY: (Continuing)

Q. Mr. Armstrong, would you start with reading the typed portion of the appeal forms signed by Mr. Hubbard on July 4, 1946.

A. "My service-connected disability amounts to more than the ten percent awarded. No disability whatever was allowed for service-connected eye trouble. No disability was allowed for a chronic and incapacitating bone infection which was also service connected and not due to misconduct.

"Ulcers: Ten percent was awarded for duodenal ulcers. This stomach condition was demonstrated as chronic and was advanced as wholly incapacitating -- 'unfit for further service' -- by the retiring board of the USN Hospital, Oakland, California, where I was hospitalized for the second time within two years on the same diagnosis. Necessity to obtain milk and a very narrow diet -- I cannot tolerate a general diet -- results in my having to abandon my old profession as ship master and explorer, and seriously hampers me as a writer. I can do nothing which involves nervous strain without becoming dangerously ill. I cannot undertake a routine job because of resulting nervous exhaustion followed by a painful flare-up of my ulcers. My income has been zero since my release from service due to my physical condition.

"Eyes: An author must research a great deal to write. This has always entailed a great deal of reading with me. I cannot now read for more than three to four minutes without suffering from headache. I have attempted to have glasses fitted by such an eminent ophthalmologist as the head of the Mount Sinai Eye Clinic without any relief. The condition was stated by Navy doctors (see health record and hospital record) as chronic and unremediable, noting that the present glasses could not be increased in strength. My eyesight when I entered the service was very good. It began to fail after prolonged exposure to tropical sunlight in the Pacific in the spring of 1942. The diagnosis was 'conjunctivitis actinic' and I was hospitalized for it at the Brooklyn Naval Hospital, before returned to duty on my own" --

MR. COOLEY: "being returned to duty".

THE WITNESS: -- "being returned to duty on my own request. My eyesight failed until I found it very difficult to read. When I was mustered out of the service at San Francisco Seperation Center, December 5, 1945, my eyesight was registered as being about thirty percent of normal with glasses. I have no copy of this record. Occupational fitness due to failed eyesight is at a point where I have written nothing since release from service due to my inability to research, and my lack of finances to enable me to hire research done.

"Infection: A chronic infection in my right hip has lamed me. It has been treated by private physicians and yields to no known therapy which could be applied. Naval doctors refuse treatment on the grounds that it was not curable, 'but might go away sometime.' After a year and a half it is worse. This infection was contracted at Princeton

University in 1945, January, according to record. Sudden transition from the tropics to the slush and icy cold of Princeton caused dramatic chills which seem to have settled in the right hip. Warm weather slightly mitigates but does not banish this injury. I cannot walk on pavement without suffering severely. Naval doctors sought to label this as writer's syndrome, but had no proof, and its diagnosis has been disproved. Surgery is not indicated. This also prevents me from working at sea where one must stand much of the time.

"My earning power, due to injuries, all service connected, has dropped to nothing. I earned one thousand dollars a month prior to the war as a writer. I cannot now earn money as a writer, and attempts to find other employment have failed because of my physical condition. Occupational disability is one hundred percent. L. Ron Hubbard."

BY MR. McMURRY: (Continuing)

Q. Thank you. Would you now turn your attention to Exhibit 335. Where did you first see it?

A. This was include in the FOI materials from -- which were given to me in 1981.

Q. What is it?

A. It's a report of an examination done on Mr. Hubbard, physical examination, September 19, 1946.

Q. All right. September 19, 1946.

MR. McMURRY: We will offer Exhibit 335.

MR. MANION: Objection.

THE COURT: I'm assuming --

MR. McMURRY: Would you please point out --

MR. COOLEY: It's a physical examination, and an x-ray examination.

THE COURT: That's correct.

BY MR. McMURRY: (Continuing)

Q. Would you please point out the salient features of that exhibit.

A. There was a fluoroscope and a radiograph done and the impression was -- and it is noted by the doctor -- duodenal deformity probably minimal, no ulcer crater. And on the second part -- and this had to do with -- this was a check of the -- for the duodenal ulcer and the other one was for arthritis. And the impression says: "calcification".

MR. COOLEY: I object. The word "arthritis" does not appear anywhere in this document.

MR. McMURRY: That's wrong, Mr. Cooley. It appears under clinical diagnosis.

MR. COOLEY: The word that is blacked out on my copy so it can't be read is arthritis?

MR. McMURRY: I don't know if you can read it or not. It says arthritis.

MR. COOLEY: I'm glad you are able to find it. I can't.

THE WITNESS: On the first page, "Arthritis right shoulder, left side of back".

MR. COOLEY: Where is that?

THE COURT: Look at the top where it says "clinical diagnosis".

MR. COOLEY: So it says "service connected".

THE COURT: There you go.

MR. COOLEY: I'm glad I found it. Thank you, Your Honor.

BY MR. McMURRY: (Continuing)

Q. Now, what were the impressions from this examination?

A. First, "Calcification right shoulder, region of insertion of supraspinatus muscle, shoulder."

Q. All right.

A. "Two. Roentgenically normal cervical spine, left shoulder, both ankles and heels."

Q. Thank you.

A. X-ray.

Q. Now, turn your attention, please, Mr. Armstrong, to Exhibit 336. When did you first see that document?

A. I saw this in Mr. Hubbard's archives, which I obtained in early 1980. I saw it sometime either in '80 or '81, but it came from those records.

Q. What is it, sir?

A. This is a letter from Mr. Hubbard to the Veterans Administration, October 15, 1947. He is asking at this time for psychiatric or psychoanalytic help.

Q. Is it signed by Mr. Hubbard?

A. Yes.

Q. And it's date again is October 15, 1947?

A. Yes.

Q. All right. Would you read the letter, please, to the Court and jury.

A. "To the Veterans Administration, Los Angeles, 25, California. Gentlemen. This is a request for treatment.

"My residence is north of North Hollywood, but I attend school at Geller Theater Workshop, Fairfax and Wilshire, Los Angeles. It would be appreciated if any outphysician selected would be located near my school as I have a vacant hour and half from 1:00 to 2:30 four days each week at school. I work at night six days per week.

"I was placed on certain medication back east and have continued it at my own expense.

"After trying and failing for two years to regain my equilibrium in civil life, I am utterly unable to approach anything like my own competence. My last physician informed me that it might be very helpful if I were to be examined and perhaps treated psychiatrically or even by a psychoanalyst. Toward the end of my service, I avoided, out of pride, any mental examinations, hoping that time would balance the mind that I had every reason to suppose was seriously affected. I cannot account for nor rise above long periods of moroseness and suicidal inclinations, and have newly come to realize that I must first triumph above this before I can hope to rehabilitate myself all.

"I cannot leave school or what little work I am doing for hospitalization due to many obligations, but I feel I might be treated outside, possibly with success. I cannot, myself, afford such treatment.

"Would you please help me.

"Sincerely, L. Ron Hubbard."

MR. McMURRY: I will offer Exhibit 336.

MR. COOLEY: I would appreciate it if it would be offered before it's read the next time, and I move to strike. That's an invasion of privacy.

THE COURT: Overruled. Your request that an exhibit be received before it is read is proper.

MR. McMURRY: I'm sorry, Your Honor, it was my oversight.

Plaintiff's Exhibit 336 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Turn your attention, please, to Exhibit 337. Tell us when you first saw it and what it is.

A. This is a report of an examination dated 11 -- it looks like 16 -- 1947. And it was included in the FOI documents which I obtained in 1981.

Q. All right. And it's for a gastrointestinal test?

A. Yes.

Q. Point out the salient features of Exhibit --

MR. McMURRY: We will offer Exhibit 337.

MR. COOLEY: Your Honor, I take it you have reviewed all of these by now and decided they are all coming in and I don't have to jump up every time?

THE COURT: Yes. You don't have to, Mr. Cooley. They come under various rules, but so far they have all been admissible, but not all under one rule.

MR. COOLEY: If they are all coming in, I will record an ongoing objection and we can get on with it.

THE COURT: Fine.

MR. COOLEY: I object to this witness being called upon to give the salient features of anything. That calls for a conclusion of what is salient and what isn't.

THE COURT: I agree with that, Mr. Cooley.

(Plaintiff's Exhibit 337 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. What were the conclusions of this report?

A. "No evidence of upper GI pathology." GI being gastrointestinal. There is a note --

THE COURT: Let me interrupt a moment so my ruling is clear on the last objection. I didn't agree with your entire statement. I don't want anyone to read something into this that I am not saying. I agree with your legal proposition that he can't --

MR. COOLEY: I understood that.

THE COURT: All right. I didn't want anything to be misunderstood as a reflection on the witness.

MR. COOLEY: No, I wouldn't do that.

THE COURT: All right.

BY MR. McMURRY: (Continuing)

Q. You were about to testify with respect to another aspect of the exhibit?

A. They note -- or that the doctor notes "the films fail to demonstrate any constant deformity or ulcer crater" at this time in 1947.

Q. Thank you. Exhibit 338, please, when did you first see that and what is it?

A. This is from the FOI materials of the same date, 1981. And it's a -- it's entitled "Clinical Record Consultation Sheet". It's a record of an examination of Mr. Hubbard. It's dated 12/11/47, 11 December of '47.

MR. McMURRY: We'll offer Exhibit 338.

THE COURT: Okay. It is received.

MR. McMURRY: Thank you, Your Honor.

(Plaintiff's Exhibit 338 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Now, what was the history given by the patient?

A. Well, it would be here that in 1942 -- we are talking about 338; right?

Q. Yes.

A. Okay. 1942 he fell down a ladder on a ship. Stated he injured his "back, right hip, left knee and right heel."

Q. Okay. And what were the complaints that Mr. Hubbard was complaining of at that time, December of '47?

A. "...pain in the upper back on prolonged standing, walking sitting. Also complains of pain in the right hip, left knee, and right heel on prolonged walking or standing on cement walks."

Q. All right. What were the findings of the doctor?

A. It's quite lengthy. Do you wish me to read that whole paragraph? It's also fairly technical involving various motions and what he could and could not do.

Q. Yes. Exhibit 339, is that an extension of this or can you tell?

A. It's part of the same examination, same date, same doctor.

Q. Right. Give us the conclusions as stated therein.

A. It states: "Probably conpression fracture of the superior end plate of the D-6. However, detail is not too good and cone shots, AP and lateral, over the area are recommended."

Q. Okay.

A. I do not know what D6 is.

Q. Look at 340, please. Can you tell us where you first found that and what it is?

A. It also came from the FOI materials and it's from the same period as the last one, and it's a gastroenterological consultation. Again, it gives a history given by Mr. Hubbard and a diagnosis.

Q. All right.

MR. McMURRY: We will offer Exhibit 340.

THE COURT: It's received.

(Plaintiff's Exhibit 340 was admitted

into evidence.)

BY MR. McMURRY: (Continuing)

Q. Now, would you read to the Court and jury the physical findings -- I think that's what it says --

A. Yes. It reads, "Negative except for high, mid-epigastric tenderness. GI series, no evidence of GI pathology."

Q. And then the diagnosis, please.

A. "Although the history is suggestive of peptic ulcer, no organic disease could be demonstrated at this time. It is suggested that his previous x-ray films, taken while in service, should be inspected. If they show presence of an ulcer, the diagnosis of peptic, (duodenal?) ulcer, chronic, presently inactive could be established."

Q. Look at Exhibit --

MR. COOLEY: What was he just reading from.

MR. McMURRY: 340.

THE COURT: 340.

MR. COOLEY: Thank you.

BY MR. McMURRY: (Continuing)

Q. Now 341, please. Can you tell us where you first found it and what it is.

A. This is a document which came from the Freedom of Information documents and it's a rating sheet; it's called a rating sheet. It has to do with the the disability which Mr.

Hubbard was then collecting as a result of whatever happened during the Navy.

Q. All right. What is its date, please?

A. February 19, 1948.

Q. All right. And the conditions, please.

MR. McMURRY: We will offer 341, Your Honor.

THE COURT: 341 is received.

(Plaintiff's Exhibit 341 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. There are five conditions -- yes, five conditions shown, are there not?

A. Yes.

Q. Would you read the condition and then the percentage of rating.

A. "Duodenal ulcer, ten percent."

Q. Then the next.

A. "Bursitis calcified, right shoulder, ten percent."

Q. The next.

A. "Arthritis" -- and the next word looks like -- "hypertrophic multiple joints, right hip, dorsal spine and ankles." The next word I cannot read. Myositis.

Q. What is the percentage?

A. Twenty percent.

Q. All right. The next?

A. This is "conjunctivitis, chronic bilateral." There is a word before that which I can't make out, but it may be a qualification of the conjunctivitis.

Q. And that percentage?

A. Ten percent.

Q. All right.

A. "Malaria, zero percent."

Q. All right.

A. And the combined percentage was thirty percent from February 1946 to December 1947, and forty percent thereafter, from December 1947.

Q. Thank you. Turn your attention then to Exhibit 342. Where did you first see that documents and what is it?

A. The first time I saw this was in Mr. Hubbard's archives in 1980 or '81. And it's the records of a medical review -- Naval Medical Review Board, and it's dated June 11, 1948.

MR. McMURRY: We will offer Exhibit 342.

THE COURT: It is received.

(Plaintiff's Exhibit 342 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Would you read the final two paragraphs of Exhibit 342, Mr. Armstrong.

A. "The Board is of the opinion that the defect for which the petitioner was medically surveyed, namely ulcer, duodenum, is not the result of his own misconduct, was incurred in the line of duty, did not exist prior to his appointment as an officer in the US Naval Reserve, but that this condition is usually remediable and does not permanently disqualify the petitioner for useful active duty in the Naval service.

"The Board, therefore, recommends that the petitioner be not authorized to appear before a naval retiring board."

Q. Thank you. Turn your attention now to Exhibit 343. Where did you first see that document and what is it?

A. I first saw this in Mr. Hubbard's archives sometime in '80 or '81.

Q. What is the date of that document?

A. 16 December 1948.

MR. McMURRY: We will offer Exhibit 343.

THE COURT: It is received.

(Plaintiff's Exhibit 343 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Would you read the final paragraph of that document, please.

A. Paragraph three?

Q. Yes, please.

A. "After a thorough review of the record and careful consideration of the case of Lieutenant Lafayette R. Hubbard, US Naval -- D, US Naval Reserve," -- it gives a number, -- "inactive, including the record of proceedings of the Naval Medical Survey Review Board dated 11 June 1948, the appearance and argument in his behalf of his representative Dr. H.C. Kincaid, Medical Consultant, Veterans of Foreign Wars of the United State, Defense Building, 1026 17th street, Northwest, Washington 6, D.C., before this board on 14 December, 1948, in the absence of Lieutenant Hubbard, and the reports of special medical examination by the naval hospital, St. Alban's, New York, dated 19 November 1948, the medical -- the retirement advisory board recommends the opinion and recommendation of the Naval Medical Survey Review Board, dated 11 June 1948 be disapproved and that Lieutenant Hubbard be authorized to appear before a Naval Retiring Board."

Q. Thank you. Now, please review Exhibit 344. Where did you first see it an what is it?

A. I first saw this in the document produced as FOI documents. They were given to me in 1981. And it's a letter from Mr. Hubbard in Wichita, Kansas to the adjudication officer of the Veterans Administration. It has to do with his taking an examination. It's dated May 1, 1951.

MR. McMURRY: We will offer Exhibit 344.

THE COURT: It is received.

(Plaintiff's Exhibit 344 was admitted

into evidence.)

BY MR. McMURRY: (Continuing)

Q. Please look at Exhibit 345, Mr. Armstrong. Tell us when you first saw that and what it is.

A. This was included in the FOI documents. I first saw it in 1981.

Q. All right. And what is it?

A. It's a medical examination, report of medical examination for disability evaluation signed by Mr. Hubbard.

Q. And it's date, please?

A. 8/1/51.

Q. Is there a place on it that shows the date of the examination?

A. Yes. 7/7/51.

MR. McMURRY: We will offer Exhibit 345.

THE COURT: It is received.

(Plaintiff's Exhibit 345 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Would you please give the narrative history as contained in Exhibit 345.

A. "Eyes tire easily, has worn all types of glasses, but claims he sees just as well without as with glasses. Eyelids red."

Q. That's the present complaint?

A. Yes.

Q. Eyelids are red. All right.

please look now at Exhibit 346 and tell us where you first saw that and what it is.

A. I first saw this in the FOI materials in 1981, and it's an examination which was done of Mr. Hubbard in 1951.

Q. All right. And the diagnosis in that was deferred -- is that correct? -- until x-rays could be received?

A. Yes. There's a history -- there is a diagnosis on the second part of this.

Q. I see.

A. But this is the orthopedic examination and it gives the various symptoms, diagnosis deferred.

Q. I see. All right. Then is Exhibit 347 a part of that?

A. Yes.

Q. I see.

A. Same examination, same date.

Q. I see. Read then in conjunction -- 347 must be read in conjunction with 346?

A. Well, they are different parts of an examination. One's for the ulcer and one's for the -- appears to be his bone problems.

Q. All right.

MR. McMURRY: We will offer Exhibit 346 and

347.

THE COURT: They will be received.

(Plaintiff's Exhibits 346 and 347 were admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. With respect to his ulcer, 347 addresses that issue?

A. Yes.

Q. Would you read to the Court and jury the diagnosis of the ulcer as of August 1, 1951.

A. "Duodenal ulcer not found on this examination."

Q. Finally, I would ask you to look at Exhibit 348.

A. Okay.

Q. Where did you first see it and what is it?

A. I first saw it included in the FOI Documents which I got in 1981, and it's a letter from the Veterans Administration, dated February 15, 1973.

Q. Who was it directed to?

A. It's addressed to Mr. Lafayette R. Hubbard. It's "to whom it may concern."

Q. All right.

MR. McMurry: We will offer Exhibit 348.

THE COURT: It is received.

(Plaintiff's Exhibit No. 348 admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Would you please read Exhibit 348 to the jury, please.

A. "The records of the Veterans Administration show that the above veteran is service connected for the following conditions: duodenal ulcer, bursitis in the right shoulder, arthritis" -- and it looks like b-l-e-p-h-a-r-d -- "blephard conjunctivitis. These conditions are considered to be forty percent disabling and were incurred during World War II. The veteran receives $106 monthly in disability compensation."

Q. Thank you Mr. Armstrong. Did you read any documents, while you were an archivist or researcher of the L. Ron Hubbard biography, relating to Mr. Hubbard's statement of his medical conditions?

MR. COOLEY: I object, Your Honor. We are approaching the area we discussed in the chambers this morning.

THE COURT: Let me talk to you a minute, gentlemen.

(Following proceedings held in chambers.)

MR. McMURRY: Your Honor, this is the material we talked about and that I advised the Court I would bring to the Court's attention, two days ago, and we are now at the time. I wanted to bring to the Court the transcript reference, starting at Page 1920 and going through 1926.

I think it's important that the Court have an opportunity to read 1920 through its entirety so you can see the portions and the context with which it was allowed in, relating exclusively to Mr. Hubbard's statement of his physical condition in 1946-47.

THE COURT: Isn't that already in evidence?

MR. McMURRY: No, Your Honor, it's not.

MR. COOLEY: That's out of the affirmations, Your Honor. You read it in there.

THE COURT: You know, I don't want to pull those out. It's not necessary.

MR. COOLEY: It's gone in other form.

THE COURT: That's what I'm saying. Isn't that already in through autobiographies and all sorts of other stuff already?

MR. McMURRY: No, Your Honor, it isn't.

THE COURT: Then where did I hear it? I'm reading this.

MR. COOLEY: You have read it before because you have read it in those papers that you have. I read it there, myself.

MR. McMURRY: If you turn to Page 1924 --

THE COURT: I'm there.

MR. McMURRY: All right.

THE COURT: I have read this before.

MR. McMURRY: We hadn't. It's not in evidence in this case in any form, and we think that it is absolutely relevant and germaine to the issue of the misrepresentation with respect to "crippled, wounded and blinded".

THE COURT: Now, let me play devil's advocate few a minute, Garry. You have in already naval records which dispute that theory. You have testimony from Armstrong which disputes that. You now have evidence from the naval records and the V.A. that he wasn't wounded in combat. That's already in.

So the fact that he cured himself of being blind and from war wounds, there are no war wounds from which he can cure himself of. That the jury can already infer. Reading this -- and I don't know why this Court did this -- but just taking these few lines are out of context of what the whole thing is.

MR. MANION: Exactly.

THE COURT: I know it's exactly the point.

MR. MANION: But I was talking to him.

THE COURT: But I can hear you.

MR. MANION: Okay.

THE COURT: The affirmations and declarations set forth tenets of belief of -- how do I go into all this without -- He sets forth in it guidelines upon which to live according to L. Ron Hubbard.

MR. COOLEY: Considering the restraints under which the Court is operating, a very fair statement I would add, it looks -- they look very much to me like the genesis of _Dianetics: The Modern Science of Mental Health_.

THE COURT: I'm sure that's correct. And I'm sure it's reflected in the other matter that I have read. To put this in -- this in and of itself -- I hate to be real disappointing to you, Garry, but I think, number one, it's out of context; number two, it's not relevant to the proposition for what you are offering it for, because I can't let you put in something that I know is out of context.

MR. McMURRY: Then may I read into this record the statements that were read?

THE COURT: You can read it into this record, but it's not going to go in to the jury.

MR. McMURRY: Very well.

THE COURT: Go ahead.

MR. McMURRY: This is what was read under oath in the case of Church of Scientology vs. Gerald Armstrong. It's read from Exhibit 500 DDDD.

THE COURT: It's in the nature of an offer of proof, I take it?

MR. McMURRY: That's correct, Your Honor.

MR. COOLEY: Why don't we just mark the transcript portion as an offer of proof?

MR. McMURRY: I will read it into the record and we'll offer the transcript as well as a Court exhibit.

"Q. Your stomach trouble you used as an

excuse to keep the Navy from punishing you. You are free of the Navy. You have no further reason to have a weak stomach. Your ulcers are all well and never bother you. You can eat anything. Your hip is a pose. You have a sound hip. It never hurts. Your shoulder never hurts. Your foot was an alibi. The injury is no longer needed. It is well. You have perfect and lovely feet. Your sinus trouble is nothing. It is not dangerous. It will vanish. The common cold amuses you. You are protected from further illness. Your cat fever has vanished forever and will never return. You do not have malaria. When you tell people you are ill, it has no effect upon your health. And in Veterans Administration examinations, you'll tell them how sick you are. You will look sick when you take it. You will return to health one hour after the examination and laugh at them. No matter what lies you may tell others, they have no physical effect on you of any kind. You never injure your health by saying it is bad. You cannot lie to yourself."

And that was what was read and we think it's germaine and relevant. We understand the Court's ruling --

THE COURT: That's my ruling.

MR. COOLEY: All right, Your Honor.

MR. McMURRY: -- and we will offer this as an exhibit. We'll offer the transcript as our next exhibit.

THE COURT: It should be No. 352? 352.

MR. McMURRY: Court only.

THE COURT: Okay.

(Plaintiff's Exhibit No. 352 was offered and admitted into evidence as Court exhibit only. Court recessed at 3:21 p.m. amd reconvened at 3:30 p.m.)

THE COURT: I was talking 1001 or -2 or something. That is an error. It's 901(2)(G) which deals with public records and reports and talks about purported public records, and they break them into catagories which apply to all levels of government, including Oregon and federal government. And it says it is not necessary to call the custodian or person from the office where the document is kept. You might read Kirkpatrick's texts on it. It's a completely liberalized and growing rule in the State of Oregon, pursuant to the commentary. That is one area.

And the second area is ancient documents, which is 901(2)(H). And that requires you authenticate each document, and we do that in a certain way. There are three conditions which have to be met. I think they have beem fulfilled in this case by the evidence that I have heard. And if they come in under that rule, they also satisfy the hearsay exception under Rule 803 sub 16.

MR. COOLEY: Thank for you clarifying the basis for your ruling, Your Honor.

THE COURT: You are welcome. Particularly, Kirkpatrick can give it to you thoroughly. I have some sections, if you ever want to look at my book, that are underlined. You are more than welcome to look at it. It does comment upon the fact that it is a growing common law situation which is -- I think the commentary pretty well states it as being liberalized, even those they state as ways of doing it they say specifically are not to be meant to be limited to those specific exceptions.

It seems to be as far as the imagination can stretch, as long as it is reasonable. Maybe that's not a correct statement, "as far as the imagination can stretch." That's probably not a correct statement, but what is reasonable I think it -- if it can be what it purports to be is the language that they like to use.

(Following proceedings held in the presence of the jury.)

BY MR. McMURRY: (Continuing)

Q. Mr. Armstrong, I've handed you Exhibit 353. Is that a photograph that you had in your possession?

A. This was a photograph which I had in my possession in early 1982. It's not one of the photographs which I had in Archives while in the Organization up to the end of 1981.

Q. All right. Who took the photograph?

A. Jim Dincalci.

Q. Where was it taken?

A. In Queens, New York, 1973, at Codwise Place.

Q. 1973?

A. Yes.

Q. Did you say New Jersey?

A. Queens, New York.

Q. Who is it of?

A. L. Ron Hubbard.

MR. McMURRY: We will offer Exhibit 353, Your Honor.

MR. COOLEY: This is not rebuttal to anything brought out on cross-examination, Your Honor, and I object to it.

THE COURT: Somewhere there was some

photographs introduced.

MR. COOLEY: That was during Mr. McMurry's case. We are now on Mr. McMurry's rebuttal case, and I would like him to state what issue on cross -- on our case this goes to.

MR. McMURRY: Well, the chance for putting in the photograph of Mr. Hubbard that could be identified did not arise during Mr. Armstrong's testimony. It only arises in Mr. Armstrong's testimony in rebuttal. They offered a series of PR photographs of L. Ron Hubbard through Mrs. Laurel Sullivan, and over our objection.

THE COURT: Who offered those photographs?

MR. COOLEY: Those went in, you remember --

MR. McMURRY: Defendants.

MR. COOLEY: -- when Mr. McMurry's last witness was Laurel Sullivan. On cross-examination in his direct case, those were offered. We then put on our defense. There were no photographs that went in, in defense. There is nothing to rebut.

THE COURT: If I remember right, pictures came of naval uniform?

MR. McMURRY: Oh, yes.

THE COURT: And things like that. They will be received.

MR. McMURRY: Thank you.

(Plaintiff's Exhibit No. 353 was admitted into evidence.)

BY MR. McMURRY: (Continuing)

Q. Now, will you please look at Exhibit 354, Mr. Armstrong, and tell us who is that a photograph of.

A. It's L. Ron Hubbard.

Q. Where was it taken, please?

A. This was also taken in -- on Codwise Place in Queens in 1973 by Jim Dincalci.

Q. All right. That's of Mr. L. Ron Hubbard?

A. Yes.

MR. McMURRY: We'll offer Exhibit 354.

MR. COOLEY: This is another one?

MR. McMURRY: Yes.

THE COURT: I think there might be three coming in.

MR. McMURRY: I'm sorry. I didn't give you this one.

THE COURT: While you are looking at those, was there a 352 that I somehow have not picked up in this?

THE CLERK: That was the Court exhibit.

THE COURT: Thank you.

MR. COOLEY: May I inquire whether the Court is allowing these by way of rebuttal to something that we did?

THE COURT: Well, I think they are -- I'm not so sure of the relevancy. I would like to hear that argument as opposed to rebuttal argument.

MR. COOLEY: I would like to have a discussion about that, myself, Your Honor.

THE COURT: Excuse us.

(Following proceedings held in chambers.)

(Following proceedings held in chambers.)

MR. COOLEY: You know, Your Honor, one makes his decisions about his defense with the view in mind as to what rebuttal is all about. I rested this case this morning so that the confines of rebuttal, at least in part, I did it so the confines of rebuttal would be what I brought out in my case.

THE COURT: That's fair enough.

MR. COOLEY: These photographs went in during the plaintiff's case, not during my case. They went in on cross-examination of Laurel Sullivan who was the plaintiff's last witness. These photographs, he's just offering these to -- there is Las Vegas night or some such thing or whatever. They are just for prejudical effect. They don't rebut anything. We didn't put in any pictures in our case and I really object to them going in. If he wanted to do it, he should have done it on his own case and not by way of rebuttal to my case, which doesn't raise any issue which permits these to go in.

THE COURT: Square me around. If your contention is right, then you are right. If what you say is the way it happened, then you are correct.

MR. McMURRY: A rebuttal case arises to meet all evidence that was deduced by defendant. It is not limited to evidence offered by the defendant in their case in chief. The reason that is the law is that because the last witness could not identify these photographs, we are not required to then say, we didn't offer them earlier, therefore we can't offer them now. These sunnyside-up, posed photographs of L. Ron Hubbard, Exhibit 885 were offered in the last witness we had, Laurel Sullivan. She did not even know of the existence of these photographs. Exhibits 353, 354, and 355.

Now, those photographs were taken by Jim Dincalci and the final photograph was taken by another person in Hemet or maybe Gilman Hot Springs, not Las Vegas.

If it was relevant, we objected to the relevance of these stagedoor Johnny photographs as not proving anything at all, but they were allowed in. Therefore, if they are allowed in for some relevance for defendant, other photographs taken in 1973 -- and I believe the testimony in 355 is something like 1980 -- will be equally relevant. Not staged, but here's the guy.

MR. COOLEY: I take it back, Your Honor;

these did not go in through Laurel Sullivan. They went in through Armstrong. I cross-examined Armstrong with this. That's where these photographs went in. Not through Laurel Sullivan.

MR. McMURRY: I don't recall precisely.

THE COURT: Nor I do. I guess, which is part of my problem. I don't want to take a lot of time arguing about, you know, this sort of thing, because I see no extreme relevance one way or the other. The only reason I got you in here is because I think the last one is one that is -- that is prejudicial.

MR. McMURRY: Very well. We won't offer it.

THE COURT: I think that is --

MR. COOLEY: I agree with that. Moreover, forty years separating these pictures.

THE COURT: I think that's something you say to the jury. You are talking about, as they say in the south, peanuts and watermelons. I just learned that today.

(Following proceedings held in the presence of the jury.)

BY MR. McMURRY: (Continuing)

Q. Again, Mr. Armstrong, 354 is a picture of Mr. Hubbard shot, again, in 1973?

A. Yes.

Q. In Queens, New Jersey?

A. New York.

Q. Queens, New York.

MR. McMURRY: We will offer 354, Your Honor.

THE COURT: 354 is received.

MR. McMURRY: Thank you.

(Plaintiff's Exhibit 354 was admitted into evidence.)

MR. McMURRY: I would like to show these to the jury, if I may, Your Honor.

THE COURT: You may.

(Plaintiff's Exhibits 353 and 354 shown to the jury.)

THE COURT: You also have one marked 355.

MR. McMURRY: I am withdrawing that.

THE COURT: You are withdrawing that exhibit?

MR. McMURRY: Yes, I am, Your Honor.

THE COURT: All right.

MR. McMURRY: Your Honor, that's all the questions I have for this witness.

THE COURT: Very well.

MR. McMURRY: I'm sorry. I made one error, I think. In the offer of exhibits, I think I failed to offer Exhibit 339, the x-ray report. Our exhibit list indicates that I did not offer it.

THE COURT: 339 I have marked as received.

MR. McMURRY: All right. If I have offered all of the medical records --

THE COURT: According to my records, you have.

MR. MANION: Me, too, Your Honor.

MR. McMURRY: Very well. Then I have no further questions of this --

THE COURT: Do you have a 356 number that's marked?

MR. McMURRY: No, Your Honor.

THE COURT: All right. Then our records coincide.

Mr. Cooley.

CROSS-EXAMINATION

BY MR. COOLEY:

Q. Was LRH an intelligence officer in the Navy?

A. Yes.

Q. You were able to establish that through your research?

A. Yes.

Q. You don't have any medical training at all, I understand; right?

A. Correct.

Q. With respect to Exhibit 331, this you place in April of 1941 because your examination indicates that's when he applied for officer's status; correct?

A. Also there is -- you notice there is a little tag on the front of that.

Q. I know that, and since you can't see the date, you remember from your memory that that's when he applied for officer's status?

A. I was about to say, there is an identical document, which has the same information, which doesn't have this thing on the top, covering up the date.

Q. I understand. I'm not quarreling with you about the date. You place it in April of '41, before the United States became involved with the World War II?

A. Yes.

Q. And the conclusion of the physical examination that was performed apparently by three physicians, was it? Or one physician? Who was the doctor that did this? I don't see his name here. Is it on the first page?

A. It lists a member of the Statutory Board of Medical Examiners, and there is three of them there, if you wish me to read their names.

Q. What I want to find out is, the third page of Exhibit 331 is a typewritten sheet that appears to be somewhat like page two, but it's not identical to it. Can you explain what that third page is?

A. Well, often these things are done in the Navy in duplicate or triplicate or quadruplicate and there would only be the one set signed. And there appears to be signatures or initials or something on this top one, not on the second one, so I would -- you know, why it is there. It can be removed if you want.

Q. I don't want it removed at all. I want you to tell me what it is.

A. Mr. Hubbard's files are replete with this sort of duplicated, often carbon copies, often copies generated by the Navy, itself.

Q. Indeed, in the course of your research you have become familiar with the fact intelligence officers sometimes have different sets of documents, did you not?

A. Well, I have -- I have to some degree a familiarity with intelligence procedures.

Q. My question: have you ever heard of separate sets of files that are inconsistent, one with the other, and contain differing information on the same subject matter when you are dealing with intelligence officers?

A. Well, the first time this came up was with --

Q. Can you answer my question?

A. I am telling you how I became familiar with that representation. There was someone, an old friend of Mr. Hubbard's, from one of his ships, who testified for plaintiff in the action against me, and that was his explanation for the various inconsistencies in Mr. Hubbard's files.

Q. Who was that person?

A. That was a man by the name of Molton, Captain Molton.

Q. Did he serve with L. Ron Hubbard?

A. He served with him on the PC 815; 1943.

Q. All right. Is that the first information you had about intelligence officers having different sets of files?

A. Well, that's the first -- first thing that ever came up regarding Mr. Hubbard's medical records. Now, I knew -- you know, even in the Scientology organization, people who are in the Intelligence Bureau --

Q. I'm talking about the Navy, not the Intelligence Bureau or GO or anything like that. I'm talking about the United States Navy only.

A. Then the only thing that I know about in that regard is what was said by Mr. Molton, and that's it.

Q. Now, the sheet that is stamped as the third sheet, which has, for example, on the first line the word "thorax" and then the finding that it was normal, and on the second line, "respiratory system, normal." That's the same as the first -- the second page, isn't it, on those two items?

A. Yes.

Q. But when we get to the third line, there is a handwritten notation on the third page which does not appear on the second page; isn't that right?

A. Correct.

Q. And that is, L. R. Hubbard; correct? Or is it something else? What are those initials?

A. In any case, the last name is Hubbard. Whatever the first two are --

Q. They could be an indication of his rank?

A. I can't say that. But in any case, the notation has been made, something Hubbard.

Q. When we get to the bottom, we have typed in the names rather than written in as they are on page two?

A. Yeah. Well, as I say, it would be a carbon or -- one of the navy's many copies.

Q. Well, it's a different form, is it not? If you will look at the bottom, it says remarks or endorsement. That does not appear on page two, does it?

A. Well, again, you know, the Navy has remarks or endorsement on that one, as well.

Q. The ultimate conclusion of the examining board or the report of the physical examination was "we hereby certify that Mr. Lafayette Ronald Hubbard is not physically qualified for appointment as an officer," -- class, whatever it is, -- "USNR." That's US Naval Reserve, is it not?

A. Correct.

Q. And apparently L. Ron Hubbard, as America was approaching war, did not accept that conclusion, did he? He appealed it?

A. Okay.

Q. Is that right?

A. There definitely was a reconsideration of it.

Q. And it went before a special board of medical examiners for the Navy Department on June 11 1941, following this April rejection of him by the medical board; correct?

A. Okay.

Q. And that board, that special board of medical examiners, reviewed what had been done below by Commander Smith or by whomever it was, the medical examiners, and they reversed that decision, didn't they?

A. Yes.

Q. And they found he was physically qualified to perform all of his duties at sea and they recommended him for appointment in the US Naval Reserve?

A. Yes.

Q. All right. Now, we have attached to that top sheet, 332, another piece of paper that appears to be a copy of that, but has certain differences in it, doesn't it?

A. Yes.

Q. What are those differences and what do they mean?

A. Well, again, this is not a typed -- or it's not a signed copy. We have the signed copy on top and the same information typed in below.

Q. Do you have any explanations as to why that's done?

A. Well, because the Navy makes many copies. They go to many departments. There is many endorsements.

Q. If you get the records from one department, you are never certain you got the duplicates of the records that went to some other department, are you?

A. Well, if you get all the records from one department, you get all the records from the one department, but --

Q. Did you ever try to make a determination of each federal office in which these records or records on L. Ron Hubbard's medical history were kept?

A. No. The FOI was done by the Guardian's Office in '75, '76, '77, and there is correspondence as to what exactly they went after in each of the departments and what they were able to get, and their statement on the completeness of it. They actually went down and viewed the files and reported back that they had everything.

Q. You took that, those records they had and that was the end of your inquiry; is that right?

A. I assembled what they had. I got those in the latter part of 1981, along with the records which I already had from Mr. Hubbard's own archives, and was able to determine that we pretty well had a chronology from prior to the war, right through past the beginnings of Dianetics into Scientology, certainly.

Q. I want to make sure what you did. You got these documents from the GO?

A. Right.

Q. Did you have any dealings with Washington on his medical records at all?

A. No.

Q. Okay. This decision on June 11, 1941, got him appointed in the US Naval Reserve; correct?

A. Yes.

Q. So as of that time, he is a US Naval Reserve officer, we are still six months away from our entry into World War II on December 7, 1941; correct?

A. Correct.

Q. When was he activated as a regular officer; that is, out of reserve status into the Navy?

A. Sometime between then and the beginning of the war.

Q. He became an active officer before Pearl Harbor, did he not?

A. Yes.

Q. Now, Exhibit 333 establishes beyond any question that L. Ron Hubbard had a very serious ulcer situation as of September 10, 1945, does it not?

A. Well, you know, it establishes what it does. Now, whether or not this is a serious ulcer, I think we would have to compare against other serious ulcers.

Q. What do you think? Do you think a duodenal ulcer is a serious matter or not?

A. Again, you have to understand all of this in the context of the whole history. And throughout this, the medical examiners were finding little or no evidence other than Mr. Hubbard's own statements.

Q. Well, do you think that this Exhibit 333 does not establish a duodenal ulcer?

A. No. It does establish a duodenal ulcer. Whether or not that's in your -- I'm just considering your use of the term "serious".

Q. Well, is it a non-serious duodenal ulcer? Is that your conclusion?

A. It's an ulcer.

Q. Let me read you the last paragraph. "In view of the recurrence of a duodenal ulcer, and its persistence now as demonstrated by x-ray evidence while under treatment, it is the opinion of the board that this officer is not physically fit to perform all the duties of his rank and that he should be ordered to appear before a retiring board." Do you see that?

A. Yes.

Q. That condition was confirmed by x-ray evidence, wasn't it?

A. That's what it says.

Q. And it was of at least sufficient seriousness for him to be ordered to appear before a retiring board, wasn't it?

A. Yes.

Q. Now, do you notice, sir, if you will skip ahead now to Exhibit 342 --

A. Yes.

Q. -- the conclusion there is that he is not to go before a retiring board, isn't it?

A. Yes.

Q. So that on June 11, 1948, the United States Navy said he was not to go before a retiring board when on September 10, 1945, he was ordered to go before a retiring board because of this duodenal ulcer. How do you square those two actions, sir?

A. They did more medical examinations in the meantime.

Q. The x-ray confirmation of the duodenal ulcer in 1945, is it your testimony, was repudiated in 1948?

A. I'm not saying that it was repudiated, but there is -- Mr. Hubbard's medical records are filled with exactly that type of contradiction, in most cases originated by Mr. Hubbard.

Q. Do you know when Mr. Hubbard wrote Dianetics: The Original Thesis, Exhibit 44 in this case?

A. 1949 is when he said.

Q. He said 1948. Would you like to read the jacket?

A. Okay.

Q. Do you agree with that?

A. No. I would say '49.

Q. Well, the jacket says, "Written in 1948, two years before the international best-selling Dianetics: The Modern Science of Mental Health, this volume is L. Ron Hubbard's famous 30,000 word presentation of Dianetics for the professional journals."

Will You accept 1948, sir?

A. I would say it's '49.

Q. Dianetics: The Original Thesis, Exhibit 44, was written about the time, is it fair to say, that this board found that he was not entitled to go before a retiring board?

A. Well, it was written sometime after that, but -- okay, it was written within a couple of years at least.

Q. We have then a situation in which an ulcer, which was manifest by x-ray evidence in September 1945, was found not to justify going before a retiring board in 1948; correct?

A. Well, you have the information in 1951 where the same -- he's complaining of exactly the same problems. So it was not cured.

Q. My point is this, the evidence that you had as of 1945, that is the medical record as of 1945, is not a diagnosis of an ulcer based upon solely subjective complaints, is it?

A. Correct.

Q. There is an objective verification of the existence of the ulcer, that objective verification taking the form of x-ray examination?

A. Correct.

Q. Okay. Now, when we move on into 1948, the middle of 1948, June 11, the board says, "The Board is of the opinion that the defect for which the petitioner was medically surveyed, namely ulcer, duodenal, is not the result of his own misconduct, was incurred in the line of duty, did not exist prior to his appointment as an officer of the US Naval Reserve, but this condition is usually remediable and does not permanently disqualify the petitioner for useful active duty in the naval service.

"The Board, therefore, recommends that the petitioner be not authorized to appear before a naval retiring board."

A. Okay.

Q. All right. That was the conclusion in 1948?

A. Yes.

Q. Now, that decision -- do you have any records whether that decision was appealed?

A. I don't know if this particular one was or not. There are appeals that -- that he continued thereafter in which Mr. Hubbard appealed from the rating that he was given of ten percent at that time.

Q. Yes. And that matter was dealt with, was it not?

A. That's correct.

Q. By Exhibit 343?

A. Okay.

Q. Which is a Navy department document that says that "After a thorough review of the record and careful consideration of the case of Lieutenant Lafayette Hubbard, D" -- what does "D" mean?

A. Where are you reading from?

Q. I'm reading from the second page, paragraph -- the number three paragraph.

A. I don't know.

Q. Okay. You don't know what "D" means?

A. No.

Q. All right. "After a thorough review the record and careful consideration of the case of the Lieutenant Lafayette Ronald Hubbard, D, US Naval Reserve 113392 inactive, including the record of proceedings of the Naval Medical Survey Review

Board, dated June 11, 1948" -- which was the document we have just been referring to, Exhibit 342, correct?

A. Yes.

Q. -- "the appearance and argument in his behalf of his representative, Dr. H. C. Kincaid, Medical Consultant, Veterans of Foreign Wars of the United States, Defense Building 1026, 17th Street N.W., Washington 6, D.C., before this board on 14 December 1948, in the absence of Lieutenant Hubbard; and the report of special medical examination by the Naval Hospital, St. Albans, New York, dated 19 November 1948, the Retirement Advisory Board recommends that the opinion and recommendation of the Naval Medical Survey Review Board, dated 11 June 1948 be disapproved and Lieutenant Hubbard be authorized to appear before a naval retiring board."

A. Okay.

Q. Okay? So that the decision which has been marked Exhibit 342 in this case was overruled by Exhibit 343, wasn't it?

A. Yes.

Q. And apparently somewhere along the line he was granted a forty percent disability pension?

A. Yes.

Q. We don't have the document that establishes that next in sequence, do we? Until we get to 1951, we have that "to whom it may concern" letter?

A. No. We had that earlier on.

Q. What document is that?

A. This is one dated 1948.

Q. What date?

A. February 19, '48. It's Exhibit No. 341.

Q. 341. Let's see what that is. What is it entitled, sir? I do not have it.

A. "Rating sheet."

Q. It's what?

A. "Rating sheet."

Q. I do not have Exhibit 341.

MR. COOLEY: May I have a copy, Mr. McMurry?

MR. McMURRY: I think you do.

(Document handed to Mr. Cooley.)

BY MR. COOLEY: (Continuing)

Q. Rating sheet. What section of the Navy does this come from?

A. Veterans Administration.

Q. And it is dated February 19, 1948, and us that this is the document that gives him his forty percent disability pension?

A. Well, there are a number of documents within the complete set of documents, you know. What was produced was only a part of all of the naval documents, but even within those there were a number of documents which refer to this.

This is certainly one of them.

Q. What I'm saying to you, sir, is Exhibit 343, which authorized him to appear before a naval retiring board and which overrules the decision of June of 1948, is dated December 16, 1948.

A. Okay.

Q. So that this document dated February of 1948, ten months before, cannot be the document by which he gets his forty-percent disability, can it? And indeed, I see nothing in there that says that.

A. Well, in each one of these things it --

THE COURT: Excuse me a minute.

Gentlemen, let me see you a minute.

(Following proceedings held in chambers.)

THE COURT: At some point one of those courts up above is going to say somebody is mixing apples and oranges. A retirement board of the Navy is a different rating than the VA.

MR. COOLEY: I understand that. That's what I'm trying to get unscrambled here.

THE COURT: The retirement board means you are trying to get on a retired status. Just like you said you went on active. You are never on active unless you come out of the academy. You are reserve status always.

THE COURT: That shows my ignorance.

THE COURT: Expecially in the Navy. You never get back in on active. Unless you are out of the academy, you are a naval reservist.

MR. COOLEY: This is why I am trying to unscramble these documents, Judge.

THE COURT: I'm not sticking my nose in. I'm just trying to be helpful. But you understand that there is a different proceeding in the VA as between the Naval retirement board, it is the difference between peanuts and watermellons.

MR. McMURRY: If you look, 342, 1948, refers to the Veterans --

THE COURT: I don't want to comment on any evidence. I'm saying be careful, because some Court is going to call you to task on this.

MR. McMURRY: 342 refers to the Veterans Administration, which is --

THE COURT: I'm trying to point out there's a big difference between Veterans and naval retirement board.

MR. McMURRY: He is beating the wrong horse.

THE COURT: Let him beat his horse.

MR. McMURRY: I don't think it's appropriate.

If he looks at the documents, he can see it is Veterans Administration --

THE COURT: Maybe he didn't see it.

MR. McMURRY: That the Veterans Administration is a different administration that gave the man a forty percent disability. It's referred to right in the Navy board of review, and -- I'm sorry, the Survey Review Board of June 11, 1948. The amount of disability as applied by the Veterans Administration is totally distinct from the naval.

THE COURT: I didn't hear you make an objection, so that's why -- just to keep everybody's coats in the right service here, I'm trying to straighten it out.

MR. COOLEY: All right. Thank you for that, Judge.

(Following proceedings held in the presence of the jury.)

BY MR. COOLEY: (Continuing)

Q. Mr. Armstrong, do you have Exhibit 341 in front of you?

A. Yes.

Q. On the second page it says the "Rating of February 13, 1946, is amended and superseded to allow service connection and compensable rating for infection of eyes, bursitis of the right shoulder, arthritis in multiple joints, all of which conditions were noted in the service and shown to be present by VA examinations of February 19, 1946, and December 11, 1947. Rating for multiple arthritis is increased based on recent exam of December 11, 1947, which demonstrates increased back disability not shown previously."

Now, is that a Veterans Administration determination?

A. I can't -- it was done by the Veterans Administration form. It's in the VA. Whether or not they had other people do the examination, I can't tell, but it appears that's what it is.

Q. Okay. When we look at the rating sheet, the top sheet, we have ratings -- the first one is "7305, duodenal ulcer"; correct, as of February 19, 1948?

A. Yes.

Q. And we have "501, bursitis, calcified, right shoulder"?

A. Okay.

Q. Right?

A. Yes.

Q. And then "5003, arthritis, hypertrophic, multiple joints, right hip, dorsal spine, and ankles with recurrent" --

A. I can't read it.

Q. -- something "myositis". Do you see that?

A. Yes.

Q. Then we have 6018. It's hard to read that first word. Can you read it?

A. No.

Q. But it does say conjunctivitis, doesn't it?

A. Yes.

Q. That's an eye condition?

A. Yes.

Q. Chronic?

A. Yes.

Q. Bilateral, meaning both eyes?

A. Yes.

Q. Then it has malaria; correct?

A. Yes.

Q. And to each of these items there is ascribed a percentage of disability; correct?

A. Yes, except form malaria.

Q. Except for the malaria?

A. Yes.

Q. And when you total them up, you come to forty percent?

A. Yes.

Q. He had ten percent for the ulcer?

A. Yes.

Q. Ten percent for the bursitis calcified in the right shoulder?

A. Yes.

Q. Ten percent for the hypertrophic arthritis, multiple joints and ankles?

A. Yes.

Q. Ten percent for the conjunctivitis, bilateral, chronic?

A. Yes.

Q. And those items total forty percent. They gave him thirty percent from February 7, 1946, to February 10, 1947, and forty percent after December 11, 1947; correct?

A. Yes.

Q. Exhibit 335, which goes back, which is a reference that is made in that VA rating document, page two, talks about the shoulder, heels and ankles. It says, "Calcification in the region of the supra spinatus muscle is noted of the right shoulder. This may represent calcification in the bursa or in the tendon of a muscle. No other changes are noted in either right or left shoulder." Correct?

A. Yes.

Q. It says, "Impression: Calcification, right shoulder, region of insertion of supra spinatus muscle." right?

A. Yes.

Q. Then it says he has a normal cervical spine in left shoulder and ankles and heels at that time; right?

A. Yes.

Q. Do you note any other physical examination at about that time that is not in here?

A. You mean that is -- that is in these documents that we haven't talked about?

Q. Well, we read the rating sheet. They referred back to some physical examinations that I don't find here.

A. Which particular ones?

Q. 1947.

A. There are two '47 exams here.

Q. Is that the examination of --

A. 337 and 338 are from 1947.

Q. What date is 33 --

A. 12/11/47. Also, 339.

Q. All right. 337 is a medical record that reads as follows: "The esophagus and stomach are normal. No retained gastric secretion. The duodenal bulb was seen to fill well, to have a normal contour."

They go through it all and they come up with an impression. "No evidence of upper GI pathology." Do you see that?

A. Yes.

Q. And yet, the VA rating, which gives him ten percent, talks about a confirmed ulcer, does it not?

A. You mean this one here in 1948?

Q. Yes, sir.

A. Well, they gave him ten percent for an ulcer.

Q. How do you account for the discrepancy between those two medical records?

A. You mean between what was found at this particular point and in the fluroscopy?

Q. Well, --

A. You know, I account for a lot of it, because I have had the totality of, you know, a mass of documents about eight inches high.

Q. I'm only talking about medical examinations now, sir, nothing else.

A. I'm talking -- even that, the medical records, themselves, are a mass of documents, and there are a tremendous number of discrepancies and they arise because Mr. Hubbard was continually varying the story, depending on what medical doctor he was talking to or what he was seeking at the time.

Q. Sir, you don't --

A. There are a lot of discrepancies for that reason. Also --

Q. We have a --

A. -- we are talking about ulcers, and even per their own statements, these things are remediable, they flare up and they subside per Mr. Hubbard, and perhaps at one occasion they are finding one and one occasion they are not finding it. I'm not present at that time.

Q. It was also confirmed by x-rays. You saw the medical report that confirmed it by x-ray, did you not?

A. I saw it.

Q. Okay. So you don't think that the doctor made up that x-ray reading, do you?

MR. McMURRY: I object, Your Honor.

THE COURT: Sustained.

BY MR. COOLEY: (Continuing)

Q. In any event, in 1951, we have a letter -- I'm sorry, it's 1973 -- we have a letter: "To whom it may concern: The records of the Veterans Administration show the above veteran is service-connected for the following conditions: Duodenal ulcer, bursitis (right shoulder), arthritis and" -- again, I cannot read that word -- "conjunctivitis" -- "bilateral conjunctivitis. These conditions are considered to be forty percent disabling and were incurred during World War II. The veteran receives $106 monthly in disability compensation."

And that is the last word of the federal government on that matter, is it not, sir?

A. Well, it's the last -- latest document that we have here.

Q. Is it the latest document that you saw?

A. Well, there was correspondence later than that, but that's the last reference to the disability from the government that I know of. I knew that sometime later, he was still getting a disability pension.

Q. Is it the last federal document that you saw obtained under the Freedom of Information Act, the latest?

A. I can't say that for sure. There were a number which I believe postdate this, but this is the last one I know of right now referring to the disability.

Q. Going to Exhibit 345, that's an examination of Mr. Hubbard's eyes on July 27, 1951; correct?

A. Yes.

Q. It says his eyes tire easily. He's worn all types of glasses, but claims he sees just as well without glasses as he does with glasses; is that correct?

A. Yes.

Q. _Dianetics_ was published when, sir?

A. 1950.

Q. What date in 1950?

A. May 9.

Q. May 9, 1950 is the anniversary of the publication of _Dianetics_, is it not?

A. Yes.

Q. Would the _Original Thesis_, having been written at least two years before that?

A. Well, I wouldn't say two years before it, but --

Q. You said 1949, didn't you?

A. '49.

Q. Even though the jacket shows '48, you think it was '49?

A. Yeah.

Q. Okay. And the disability pension was awarded in 1948?

A. Well, it began in 1946, he upgraded it in '48.

Q. He got ten percent in '46, they gave him forty percent in 1948?

A. Right.

MR. COOLEY: That's all.

MR. McMURRY: Nothing further.

THE COURT: You may step down, Mr. Armstrong.

(Witness was excused.)

MR. McMURRY: Your Honor, our next witness cannot be in attendance in the court until 9:30 tomorrow morning. We were surprised by the sudden resting of the defendants' case and that witness cannot be here. We would ask for a recess until 9:30 tomorrow morning.

THE COURT: Okay. We will recess until tomorrow morning at 9:30. Leave your notes locked in the jury room and please remember all my cautionary instructions.